

Relationship Property in New Zealand
by **Bill Atkin and Wendy Parker**

Butterworths 2001

ISBN 0-408-71625-8

Reviewed by Sue Farran^[*]

After a drawn out parliamentary and consultation process – which is well documented in this book – New Zealand passed the *Property (Relationships) Amendment Act 2001* which amended the *Matrimonial Property Act 1976*. This Act, which came into effect in February 2002, marks a crucial development in family law as it brings together under one piece of legislation provisions relating to married and de facto partners, taking into consideration pre-relationship property, property rights during the relationship and at its termination, including by death.

The authors offer a close examination of the new law and its potential impact on future property disputes, starting first with consideration of the history of the policy behind the Act and then a chapter on the general scope, limitations and innovations of the Act which applies not only to married and unmarried couples but also same sex partners. Chapter three looks at the definition of relationship property and indicates clearly the approach to some of the more troublesome forms of property such as pensions, insurance policies, heirlooms and Maori *taonga*, and beneficial interests under trusts. Chapter four examines the general rules for the division of property and the importance of the classification of property into separate and relationship property. The principle of equal division of the latter are considered as well as the exceptions to this principle. Chapter five looks at how the new law deals with economic disparity between the parties and the powers given to the courts to make adjustments. Chapters six considers widowed parties and chapter seven looks at questions regarding the payment of maintenance of one party by the other and issues of child support, while chapter eight examines how the new law applies where parties have opted to contract out of legislative provisions. Chapter nine deals specifically with the use and abuse of family trusts and companies in the context of relationship property and chapter ten considers the claims of creditors and debtors of the parties. The concluding chapter reviews the jurisdiction, procedure, orders and transitional rules relating to the Act.

The organisation of the subject material into these chapter headings makes for interesting reading although some degree of mental agility is required to leap around the Act. There is a wealth of reference to existing case law, some of which is elaborated in the text. This is useful for the reader not wholly familiar with New Zealand jurisprudence in this area of law. There is also interesting commentary on how past cases might have been decided similarly or differently under the new law. Some of this is necessarily speculative as the new legislation confers a number of discretions on the courts and it is too early yet to see how these might be exercised or what precedents will emerge.

Throughout the book the authors are careful to comment on the relationship between the previous law and the new provisions, as the 2001 Act is essentially an amending Act not a repealing Act. Attention is also drawn to the awkwardness of this co-existence and the wider relationship with other legislation and

principles of common law and equity applicable to this topic area, many of which will remain applicable where situations fall outside the parameters of the legislation.

While the book raises and touches on many areas of concern to most common law systems, it does presuppose a sound knowledge of existing family law in New Zealand, which might perhaps, limit its readership, especially as the general focus of the book is on the practical application of the law.

Nevertheless the book provides a useful and readable account of some major innovations in this area of law and while these may seem a little avant garde for much of the Pacific region the New Zealand approach certainly offers a useful A comparative model of how contemporary issues in respect of relationships and property may be dealt with. It should also be borne in mind that this new legislation will have a profound impact on the many Pacific Islanders who live in New Zealand, and indeed their lifestyles and social organisation have been taken into account in the formulation of the law. The region is fortunate to have this type of ground breaking legislation on its doorstep and authors who can explain it so lucidly.

[*] Associate Professor, School of Law, University of the South Pacific, Port Vila, Vanuatu

© University of the South Pacific 1998-2006